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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

SINGLE BENCH: HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO.6046 OF 2005

PETITIONERS

1. Somveer Gupta, S/o Premnarayan Gupta, Aged about 38 years, Vidhya Nagar Bilaspur (C.G.)
2. Gajanand Agrawal S/o Late Kedarnath Agrawal, aged 31 years R/o Vidhya Nagar Bilaspur (C.G.)

Vs.

RESPONDENTS

1. State of Chhattisgarh Through its Secretary Department of Housing and Environment Mantralaya, DKS Bhawan, Raipur (C.G.)
2. Municipal Corporation, Through its Commissioner Bilaspur (C.G.)

Present: Mr. R. Pradhan, learned counsel for the petitioners.

Mr. Utkarsha Verma, learned Dy. G.A., for the State.

Mr. A.S. Kachchawaha, learned counsel for the Municipal Corporation.

ORAL ORDER

(Passed on 12th January, 2006)

This writ petition is preferred under Article 226 of the Constitution of India against the notice issued by the Municipal Corporation, Bilaspur, the second respondent herein, calling upon the petitioners herein to remove the unauthorized construction of corridor passage within three days from the date of receipt of the notice. Of course, in the writ petition, it is asserted by the petitioners that the allegation made against them by the second respondent is not correct. Opposing the writ petition the second respondent has filed a detailed

reply in which it is specifically averred that the petitioners have encroached upon the corridor space and put up construction illegally. What emerges from the pleadings filed in this case is the factual controversy. The controversy brought before the Court cannot be resolved only on the basis of affidavits and counter – affidavits. In order to grant the relief and in order to resolve the factual controversy, it becomes imperative for the Court to undertake the fact-finding and the fact finding is not possible without permitting the parties to lead evidence and tender witnesses for cross-examination by each other. In that view of the matter, I am not inclined to entertain this writ petition. The writ petition is, therefore, dismissed, however, reserving liberty to the petitioners to work out their legal remedies by instituting a suit before the jurisdictional civil Court. All the contentions raised by the parties are left open to be agitated before the civil Court. No costs.

Sd/-
Chief Justice